



HB 154 OPPOSE

HB 154 would amend FOIA by creating a publicly available free, centralized database for “any public records” held by “every public body” to be maintained by the Virginia Information Technologies Agency (VITA).

VCOG’s mission is to promote access to public records and public meetings, but it cannot support legislation that could impede access to records and information.

Lines 111 through 122 create a new section in FOIA, 2.2-3716, directing every public body (*that means state, regional and local governments and agencies, as well as commissions, committees, universities, school districts, sheriffs, etc.*) to transfer any public records in its possession (*that means reports, photographs, maps, emails, brochures, invoices, databases, payroll, etc.*) into a public records database created and managed by VITA and that, according to lines 19-21, VITA is to make freely accessible to the public. The proposal requires all of these public records to be redacted before being submitted to VITA (lines 116-117).

In addition to the *crippling fiscal and logistical burden* this bill would put on the public bodies to transfer the records (not just a one-time transfer, but continually transferring, since public records are created every day) and on VITA to accept, manage and maintain them, including adhering to retention schedules issued by the Library of Virginia, VCOG also notes:

- Pre-redaction of records is not a good idea. Redaction is currently done on a case-by-case basis, meaning there are times when it is better for the public body to release a record in full, without redactions. Making that determination at the time of transfer instead of at the time of request destroys that case-by-case discretion.
- Pre-redaction assumes that public bodies interpret exemptions the same way. Some public bodies interpret exemptions narrowly to only exclude specific records or information, while others interpret exemptions broadly to cover practically anything and everything. Only the Supreme Court of Virginia can say definitively how an exemption should be interpreted, and even then, the determination would apply solely to the exemption’s application to the specific records requested.
- Even if fiscally and logistically feasible, the bill would create a divide between those with easy access to an online database and those without.

It should also be noted that the second enactment clause directs VITA to work with the FOIA Council (which has a staff of 1.5 employees) to convene a workgroup consisting of representative from state and local public bodies in every state region, which could literally number in the hundreds of people, to figure out how to take on this monumental task. (*It also asks whether other states do this. Quick answer: NO!*)

Please contact Megan Rhyne (540-353-8264 or mrhyne@opengovva.org) with questions.